

November 29, 1999 *and granted as patents prior to December 10, 2004*, Section 103(c) is limited and, thus, would not apply to the instant application. This is an incomplete reading of the MPEP and ignores the above italicized portion.

Specifically, the Examiner's attention is directed to MPEP 706.02(l)(1)(I), page 700-55, which expressly provides, as follows:

The Cooperative Research and Technology Enhancement Act of 2004 (CREATE Act), in part, redesignated the former 35 U.S.C. 103(c) to 35 U.S.C. 103(c)(1) and made this provision effective to all applications in which the patent is granted on or after December 10, 2004. Therefore, the provision of 35 U.S.C. 103(c)(1) is effective for all applications pending on or after December 10, 2004, including applications filed prior to November 29, 1999. (emphasis added)

Thus, in accordance with the MPEP, the present application is, in fact, entitled to the provisions of 35 U.S.C. §103(c)(1). Since Takemura was, at the time the invention, made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s), it is not available as prior art under 35 U.S.C. §103(a). Hence, withdrawal of the rejection is respectfully requested.

In view of the foregoing remarks, this claimed invention, as amended, is not rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this response, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 19-2380. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned patent agent at (202) 585-8207.

Respectfully submitted,

NIXON PEABODY, LLP

/Jeffrey L. Costellia, Reg. #35,483/

Jeffrey L. Costellia
Registration No. 35,483

NIXON PEABODY LLP
CUSTOMER NO.: 22204
401 9th Street, N.W., Suite 900
Washington, DC 20004
Tel: 202-585-8000
Fax: 202-585-8080